

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**Securities and Exchange Commission, §  
Plaintiff, §  
Vs. § CIVIL ACTION NO. H-04-2799  
§  
Carl R. Rose, Marvin M. Barnwell, Stacey §  
J. Blake, George J. Cannan, Sr., George J. §  
Cannan, Jr., Earl Shawn Casias, §  
Lawrence A. Clasby, Hector J. Garcia, §  
David A. Keener, Charles A. Leaver, §  
Mark K. Menzel, Frank H. Moss, and §  
Harris D. Ballow, §  
Defendants. §**

**MEMORANDUM AND ORDER**

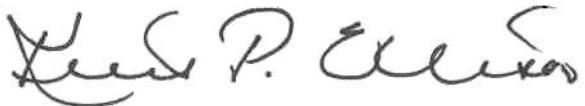
This is an action for securities fraud arising from Defendants' alleged manipulation of the stock prices of two publicly held companies. Defendants George J. Cannan, Sr. and George J. Cannan, Jr. ("the Cannans") have filed a motion to compel Plaintiff to submit expanded answers to the Cannans' interrogatories. The motion was not properly served upon the Cannans' codefendant, Harris D. Ballow. *See* Fed. R. Civ. P. 5(a) (requiring a party to serve all other parties with copies of all written motions other than *ex parte* motions). The certificate of service attached to the motion reflects that the Cannans did not even attempt to serve the motion upon Ballow. The motion, Docket No. 90, is therefore **DENIED** without prejudice to refiling.<sup>1</sup>

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<sup>1</sup> While the Court declines to decide the merits of the motion before proper service is effected on all parties, it should be noted that allegations of inadequate pleading are more properly raised in a motion to dismiss than in a motion to compel responses to interrogatories. In addition, should the Cannans decide to refile the motion to compel after effecting proper service, the new motion should address Plaintiff's supplemental responses to the interrogatories, supplied after the original motion was filed.

**IT IS SO ORDERED.**

**SIGNED** at Houston, Texas, on this the 28th day of September, 2005.



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KEITH P. ELLISON  
UNITED STATES DISTRICT JUDGE

**TO INSURE PROPER NOTICE, EACH PARTY WHO RECEIVES  
THIS ORDER SHALL FORWARD A COPY OF IT TO EVERY  
OTHER PARTY AND AFFECTED NON-PARTY EVEN THOUGH  
THEY MAY HAVE BEEN SENT ONE BY THE COURT.**